

**Letter of Findings Number: 02-20100609P
Corporate Income Tax-Penalty
For the Year 2007**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer was a corporation doing business in Indiana. Taxpayer filed its 2007 tax return in early 2010 and paid the unpaid tax due. The Indiana Department of Revenue ("Department") imposed a ten percent negligence penalty. Taxpayer protested the penalty assessment. The Department conducted a hearing, and this Letter of Findings results.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to remit the full amount of corporate income tax on or before the due date for payment.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer explained that its previous management had not filed tax returns, remitted tax payments, or properly organized its records necessary to determine its Indiana corporate income tax. Taxpayer explained that, after the removal of previous management and many employees, it was able to resolve the previous mismanagement and determine Taxpayer's proper tax liability. Taxpayer has also asserted that its affiliated companies filed all tax returns in a timely manner since the removal of prior management.

The Department acknowledges the efforts of Taxpayer's current management and employees to resolve the previous management's lack of compliance. However, the standard for negligence is determined by the previous management's lack of compliance with Indiana, even though current management is left with the resulting problems. Taxpayer's actions under prior management constituted a disregard for Indiana tax laws for the tax year in question, and thus the penalty is not waived.

FINDING

Taxpayer's protest is denied.

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